

- (I) HARM;
- (J) Hellfire;
- (K) SLAM; and
- (L) GBU 10, 12, and 16.

(ii) Training Events:

(A) Surface-to-surface Gunnery Exercises (S-S GUNEX)—up to 1700 exercises over the course of 5 years (an average of 340 per year).

(B) Bombing Exercises (BOMBEX)—up to 150 exercises over the course of 5 years (an average of 30 per year).

(C) Sinking Exercises (SINKEX)—up to 10 exercises over the course of 5 years (an average of 2 per year).

(D) Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) Systems—up to 60 exercises (total combined with the AN/SSQ-125A (AEER)) over the course of 5 years (an average of 12 per year).

(3) The taking of marine mammals may also be authorized in an LOA for the activities and sources listed in §218.110(c)(1) should the amounts (*i.e.*, hours, dips, number of exercises) vary from those estimated in §218.110(c)(2), provided that the variation does not result in exceeding the amount of take indicated in §218.112(c).

[75 FR 45547, Aug. 3, 2010, as amended at 77 FR 4924, Feb. 1, 2012]

§218.111 Effective dates.

Amended regulations are effective February 1, 2012, through November 9, 2015.

[77 FR 4924, Feb. 1, 2012]

§218.112 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 218.117 of this chapter, the Holder of the Letter of Authorization (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals within the area described in §218.110(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) [Reserved]

(c) The incidental take of marine mammals under the activities identified in §218.110(c) is limited to the species listed in paragraphs (c)(4) and (5) of this section by the indicated method

of take and the indicated number of times (estimated based on the authorized amounts of sound source operation), but with the following allowances for annual variation in sonar activities:

(1) In any given year, annual take, by harassment, of any species of marine mammal may not exceed the amount identified in paragraph (c)(4) and (5) of this section, for that species by more than 25 percent (a post-calculation/estimation of which must be provided in the annual LOA application);

(2) In any given year, annual take by harassment of all marine mammal species combined may not exceed the estimated total of all species combined, indicated in paragraphs (c)(4) and (5), by more than 10 percent; and

(3) Over the course of the effective period of this subpart, total take, by harassment, of any species may not exceed the 5-year amounts indicated in paragraphs (c)(4) and (5) by more than 10 percent. A running calculation/estimation of takes of each species over the course of the years covered by the rule must be maintained.

(4) Level B Harassment:

(i) Mysticetes:

(A) Humpback whale (*Megaptera novaeangliae*)—75 (an average of 15 annually);

(B) Fin whale (*Balaenoptera physalus*)—720 (an average of 144 annually);

(C) Blue whale (*Balaenoptera musculus*)—95 (an average of 19 annually);

(D) Sei whale (*Balaenoptera borealis*)—5 (an average of 1 annually);

(E) Minke whale (*Balaenoptera acutorostrata*)—45 (an average of 9 annually); and

(F) Gray whale (*Eschrichtius robustus*)—20 (an average of 4 annually).

(ii) Odontocetes:

(A) Sperm whales (*Physeter macrocephalus*)—635 (an average of 127 annually);

(B) Killer whale (*Orcinus orca*)—70 (an average of 14 annually);

(C) Pygmy or dwarf sperm whales (*Kogia breviceps* or *Kogia sima*)—20 (an average of 4 annually);

(D) Mesoplodont beaked whales—75 (an average of 15 annually);

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(E) Cuvier's beaked whales (*Ziphius cavirostris*)—70 (an average of 14 annually);

(F) Baird's beaked whales (*Berardius bairdii*)—65 (an average of 13 annually);

(G) Short-finned pilot whale (*Globicephala macrorhynchus*)—10 (an average of 2 annually);

(H) Striped dolphin (*Stenella coeruleoalba*)—200 (an average of 40 annually);

(I) Short-beaked common dolphin (*Globicephala macrorhynchus*)—6280 (an average of 1256 annually);

(J) Risso's dolphin (*Grampus griseus*)—500 (an average of 100 annually);

(K) Northern right whale dolphin (*Lissodelphis borealis*)—3705 (an average of 741 annually);

(L) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)—2855 (an average of 571 annually);

(M) Dall's porpoise (*Phocoenoides dalli*)—23760 (an average of 4752 annually); and

(N) Harbor Porpoise (*Phocoena phocoena*)—596370 (an average of 119274 annually).

(ii) Pinnipeds:

(A) Northern elephant seal (*Mirounga angustirostris*)—1890 (an average of 378 annually);

(B) Pacific harbor seal (*Phoca vitulina*)—2930 (an average of 586 annually);

(C) California sea lion (*Zalophus californianus*)—1430 (an average of 286 annually);

(D) Northern fur seal (*Callorhinus ursinus*)—6825 (an average of 1365 annually); and

(E) Steller sea lion (*Eumetopias jubatus*)—600 (an average of 120 annually).

(5) Level A Harassment:

(i) Fin whale—5 (an average of 1 annually);

(ii) Sperm whale—5 (an average of 1 annually);

(iii) Dall's Porpoise—15 (an average of 3 annually);

(iv) Harbor Porpoise—5 (an average of 1 annually);

(v) Northern right whale dolphin—5 (an average of 1 annually);

(vi) Short-beaked common dolphin—10 (an average of 2 annually);

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(vii) Northern elephant seal—10 (an average of 2 annually);

(viii) Pacific harbor seal—5 (an average of 1 annually); and

(ix) Northern fur seal—5 (an average of 1 annually).

EDITORIAL NOTE: At 75 FR 69319, Nov. 10, 2010, subpart M was added; at that time, §218.112 was added with two paragraphs (a)(4)(ii).

§218.113 Prohibitions.

No person in connection with the activities described in §218.110 may:

(a) Take any marine mammal not specified in §218.112(c);

(b) Take any marine mammal specified in §218.112(c) other than by incidental take as specified in §§218.112(c)(1) and (c)(2);

(c) Take a marine mammal specified in §218.112(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§216.106 and 218.117 of this chapter.

§218.114 Mitigation.

(a) When conducting training and utilizing the sound sources or explosives identified in §218.110(c), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 218.117 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(1) Navy's General Maritime Measures for All Training at Sea:

(i) Personnel Training (for all Training Types):

(A) All commanding officers (COs), executive officers (XOs), lookouts, Officers of the Deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-submarine Warfare (ASW)/Mine Warfare (MIW) helicopter crews shall complete the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge lookouts shall complete both parts one and two of the MSAT; part two is optional for other personnel.